HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. No. 32 of 2005

United Insurance Company Ltd., Ambikapur

Versus

Babulal & others

POST FOR JUDGMENT ON 11th May, 2007

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

M. A. NO.32 OF 2005

APPELLANT
Insurer — United Insurance Company Ltd., Through Branch Manager, Ambikapur Branch, Ram Mandir Road, Ambikapur, District Sarguja (C.G.)

Versus

RESPONDENTS
Claimant — 1. Babulal, S/o Dhanraj Rajwar, by Caste, aged about 61 years, Retired Teacher and Agriculturist, r/o Village-Kurwa, P.S. Vishrampur, Tehsil Surajpur, Dist. Sarguja (C.G.).

Owner of Scooter — 2. Raghunandan, S/o Ghasi, Rajwar by caste, aged about 35 years, r/o Village-Artosa @ Kamlapur, P.S. Jainagar, Tehsil Surajpur, Dist. Sarguja (C.G.)

Driver of Scooter — 3. Dharampal @ Dharamsai, s/o Kamalsai, Rajwar by caste, aged about 35 years, r/o Village- Artosa @ Kamlapur, P.S. Jainagar, Tehsil Surajpur, Dist. Sarguja (C.G.)

Present:

Mr. Ghanshyam Patel, Advocate for the appellant.

Mr. Rahul Mishra, Advocate for respondent No.1.

None for respondent No.2 & 3.

JUDGMENT

(Delivered on 11/05/2007)

Dhirendra Mishra, J

1) This appeal by the appellant-Insurer under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') is directed against the award dated 31st August, 2004 passed by the 3rd Additional Motor Accident Claims Tribunal (Fast Track Court),

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Surajpur, District Sarguja in Claim Case No.30/03 whereby learned Claims Tribunal has awarded a sum of Rs.40,000/- in favour of the claimant/respondent No.1 herein for the injuries sustained by him on 17.1.2000 with the use of Vespa Scooter bearing registration number MP27-Z-3621 whose registered owner is respondent No.2 herein and the same was driven rashly & negligently by respondent No.3-Dharampal.

2) It is not in dispute that learned Claims Tribunal had permitted the appellant Insurance Company to take defence other than available under Section 149 (2) of the Act.

3) The only ground urged by learned counsel for the appellant to assail the award is that though the accident took place allegedly on 17.1.2000, however, no report was lodged by the claimant in the concerned police station mentioning therein that the vehicle insured by the appellant was involved in the accident. Reasons assigned by the claimant that he had entered into a compromise with respondent No.3-Dharampal, who had promised to adequately compensate, therefore, he did not file the report, is not sufficient explanation for non-filing of the report. Respondent Nos.2 & 3 in their reply to the claim petition have categorically denied any accident involving the said scooter and stated that the claim petition has been filed on 6.4.2002 more than 2 years after the date of accident and in these circumstances the finding of the claims tribunal that the insured vehicle was involved in the accident is not based on the reliable and cogent evidence available on record.

4) On the other hand, learned counsel for respondent No.1 has supported the impugned award and submitted that the claimant as also the eyewitness have proved the involvement of insured vehicle in the accident and simply non-filing of FIR by the claimant will not disentitle him for compensation.

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5) I have heard learned counsel for the respective parties, perused the impugned award as also the documentary & oral evidence available on record.

6) Admittedly, no report was lodged by the claimant in the concerned police station regarding the accident. Roznamchasanha of Ex.P-1, has been proved by Head Constable Mohar Sai (AW-2), who has stated that on 17.1.2000 he received information from Prem Thakur of PHC, Surajpur which related to the accident of claimant, that was kept for enquiry by the Station House Officer, however, he is not able to state whether the Station House Officer has conducted any enquiry or not. The report did not mention the number of offending vehicle involved in the accident. From perusal of the statement of the applicant/claimant it appears that the claimant has stated that he received grievous injuries in the said accident as a result of which he fell unconscious and therefore, he did not lodge the report and he has filed affidavit for the same.

7) AW-1 Kalamram Rajwade claiming himself to be an eyewitness has stated that he was grazing his cattle on 17.1.2000 beside the road in Village Girwarganj, at that time he saw that one scooter had dashed against Babulal as a result of which he sustained injuries. He took the claimant to the hospital and at that time the person who had dashed with his scooter was also caught and brought hospital where he gave in writing to the doctor that no report should be lodged and he shall be paying the expenses towards treatment to the injured.

8) Claimant Babulal (AW-3) has also stated that he sustained injuries by the said scooter on the date of accident which was being driven by respondent No.3 Dharampal and Dharampal wrote a letter to the B.M.O. that he shall be paying expenses towards the treatment, therefore, no action should taken. Said letter is Ex.R-4.

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9) Dr. I.D Gupta (AW-4) has stated that the claimant was brought to him on 17.1.2000, he was treated by him, he was admitted in the hospital from 17.1.2000 to 26.1.2000 and thereafter he was referred to District Hospital, Ambikapur for further treatment. After preliminary treatment he had regained consciousness. Dr. B.S. Sengar (AW-5) has also proved that he has treated the claimant as an indoor patient.

10) AW-6 Ramsharan is nephew of the claimant, who has stated that Kalamram informed him that Dharampal has caused the accident. Dharampal had given in writing not to lodge report and he shall be meeting the expenses towards the treatment. Document Ex.P-14 is written by Dharampal.

11) Driver and owner of the vehicle have not examined any witness on their behalf, whereas, appellant Insurance Company has examined Anup Mehta as their witness, who has stated that he had conducted enquiry after the accident and recorded statements of Babulal, Ramsharan, Dharampal & Santosh Devangan. On further enquiry he found that the accident was in fact caused by some jeep, as at the relevant time the claimant was traveling by his Spark Moped bearing registration number MOL 8556 and he was dashed by jeep.

12) Document Ex.P-14 available on record is allegedly written by respondent No.3-Dharampal, driver of the scooter at the relevant time. This document has been proved by the claimant, however, it does not bear the signature of Dharampal, the same is addressed to the B.M.O., CHC, Surajpur and has been adduced in evidence by the claimant himself. In the said document reference of motorcycle is there in place of scooter. Doctors who have been examined by the claimant have not stated about any communication by respondent Dharampal, as alleged in Ex.P-14. From the claim petition it is also evident that initially two persons were arrayed as non-applicants, however, subsequently name of non-applicant No.2

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was deleted at the instance of the claimant on the ground that in fact both the persons are one and the same and accordingly, claim petition has been amended.

13) On the basis of oral evidence available on record and further considering that the claimant or his relatives did not lodge any report regarding accident with the concerned police station, Roznamchasanha of Ex.P-1 does not mention the registration number, type of vehicle or the name of the driver, creates doubt about the involvement of the insured scooter in the said accident. This is further strengthened by the document of Ex.P-14 adduced by the claimant himself in the evidence which mentions involvement of motor cycle.

14) Taking into consideration that the claimant did not lodge the report about the incident for which he was duty bound and further considering that he entered into some sort of compromise with Dharampal, which has been denied by the said Dharampal in his reply to the claim petition and thereafter filed this claim petition after a lapse of more than two years, I am of the considered opinion that the Claims Tribunal was not justified in reaching to the conclusion that the insured vehicle was involved in the said accident by which the claimant sustained injuries.

15) In the result, the appeal preferred by the appellant Insurance Company is allowed and the impugned award saddling the appellant with the liability of satisfying the award of compensation is hereby set aside. The appellant insurance company shall be entitled to recover the amount, if any, paid by the Insurance Company to the claimant. No order as to costs.

Sd/-
Dhirendra Mishra
Judge

Roshan/-